HARMONIZED TARIFF CLASSIFICATION –
WHAT YOU NEED TO KNOW!

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About your Speaker

George Tuttle, III is an attorney with the law firm of George R Tuttle Law Offices in San Francisco. He has been in practice for over 30 years. George’s practice emphasis is on Customs, international trade regulation, and export compliance. He works with both small and large importers, as well as customs brokers and freight forwarders on import and export related matters.

He assists companies with compliance audits and to develop effective compliance programs; determine correct customs duties, values, product classifications, and duty preference eligibility; obtain rulings, file protests; and resolve penalty, seizure and enforcement cases.

Recently, was editor and a principal author for Chapter 9 “Focused Assessments” – for the American Bar Association’s publication U.S. Customs Law: A Practitioner's Guide.

He has also contributed materials for the ABA's annual publication Customs Law Committee Year in Review for 2013 and 2014, 2015 and most recent 2016.

He and the firm litigate matters before the United States Court of International Trade (CIT) and the Court of Appeals for the Federal Circuit (CAFC) in Washington D.C., on customs matters such as classification and valuation.

Additional information about Mr. Tuttle can be found at [www.tuttlelaw.com](http://www.tuttlelaw.com).
Program Agenda

Seminar Topics:

- Background, structure and history of the Harmonized Tariff Schedules and its relationship to the World Customs Organization and the Harmonized Commodity Description and Coding System.
- Understanding and applying the General Rules of Interpretation (GRIs)
- “Common meaning” and its application to tariff provisions
- The Rule of Relative Specificity; Eo Nomine vs. Use Provisions
- Understanding “Principle Use” and the Carborundum Factors
- Essential character vs. principal function
- Helpful hints for Protests and Ruling Requests on Tariff Classification
- Tariff Classification for Exports
The HTSUS: Where it comes from

The HTSUS was originally adopted and ratified by Congress in 1989.

It is based on the World Customs Organization’s (WCO) Harmonized Classification and Coding System.

You can visit the WCO by going to:

http://www.wcoomd.org
The HTSUS: Where it comes from
Harmonized System Committee

The HS Committee performs functions as described in Article 7 of the HS Convention. To that end, the Committee acts under the overall direction of the WCO Council and Policy Commission, with administrative support provided by the WCO Secretariat.

read more

Harmonized System Review Sub-Committee

The Review Sub-Committee (RSC) acts under the overall direction of the HS Committee with administrative support provided by the WCO Secretariat.
3. Purpose and Scope

The purpose and scope of the HS Committee is to:

- interpret the HS legal texts in the most appropriate manner to secure uniform classification of goods, including settlement of classification disputes between CPs, thus facilitating trade (uniform interpretation and application);
- amend the HS legal texts to reflect developments in technology and changes in trade patterns as well as other needs of HS users (updating);
- promote widespread application of the HS (promotion);
- examine general questions and policy matters relating to the HS (general and policy matters).

4. Key Deliverables

The HS Committee’s key deliverables are to:

uniform interpretation and application

- settle classification questions and disputes;
- revise the HS Explanatory Notes and Classification Opinions;
- secure speedy and uniform implementation of classification decisions;
- draft recommendations to secure uniformity in the interpretation and application of the HS, for example, the Recommendations on Pre-entry Classification Programmes and the Good Classification Work Model;
- support the work of the Secretariat in ensuring uniform application of the HS, such as with regard to the publication of the HS database (On-line and CD-ROM), Correlation Tables between the current edition and the amended edition of the HS, the HS Classification Handbook and the Alphabetical Index.

Updating

- amend legal texts to reflect developments in technology and changes in trade patterns as well as other needs of HS users;
- encourage CPs to implement the amendments in a timely manner.
Recent WCO Classification Decisions

Recent WCO Classification Decisions

<table>
<thead>
<tr>
<th>No</th>
<th>Product Description</th>
<th>Classification</th>
<th>HS Codes Considered</th>
<th>Classification Rationale</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Arachidonic Acid (ARA) Oil, in the form of natural mixed glyceride which goes through fungi fermentation (Maitreya Alpalg)</td>
<td>1515.90</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Composition: 95 – 98 % triglyceride, 2 - 5 % diglyceride and monoglycerides.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>It is a natural supplement.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>The product is a light yellow or orange-yellow liquid at room temperature, and it turns into solid form under 4°C. It is dissolvable in organic solvents such as hexane or petroleum ether, but not dissolvable in water.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2.</td>
<td>Coconut water obtained from green coconuts (99.95 %) with added sugar of 0.05 % to control taste between different batches of coconuts. The water is naturally coconut flavoured. The water is bottled in 290 ml glass bottles with 24 bottles packed in a carton.</td>
<td>2009.89</td>
<td>20.09 and 22.02</td>
<td>GIRs 1 and 6</td>
</tr>
<tr>
<td>3.</td>
<td>Rose hip juice concentrate – Brown viscous liquid (Brix value 65) made of 100 % rose hips. The product is used as a raw material for the manufacture of beverages and foodstuffs, and is put up in aseptic bags weighing 250 kg.</td>
<td>2105.90</td>
<td>13.02 and 21.06</td>
<td>GIRs 1 and 6</td>
</tr>
<tr>
<td>4.</td>
<td>Certain INN products (See “Classification of “diancon” (INN list 158), Subheading 21.02), (INN list 149) and Chapter 29 and 30</td>
<td>Chapters 29 and 30</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Recent WCO Classification Decisions

Amendments to the Compendium of Classification Opinions – HS Committee 57th Session

Page XI/3b.

Insert the following Classification Opinion:

"6109.90 2. Women’s long-sleeved T-shirt without a collar, made of light-weight knitted fabric (87 % polyester, 13 % elastane). The bottom edge of the T-shirt and the sleeves are hemmed.

This T-shirt is one component of a woman’s set of garments, which also consists of a pair of trousers, which is classified separately in subheading 6104.63. Both garments are presented together, put up for retail sale.

Application of GIRs 1 (Note 14 to Section XI) and 6.

See also Opinion 6104.63/1."
Classification Rulings – HS Committee 55th Session

The following list contains the classification decisions (other than those subject to a reservation) taken by the Harmonized System Committee (55th Session) together with their related Harmonized System codes classification rationale.

Advice

Parties seeking to import or export merchandise covered by this ruling are advised to consult the implementation of the decision by the importing or exporting country’s customs authorities.

<table>
<thead>
<tr>
<th>No</th>
<th>Product description</th>
<th>Classification</th>
<th>HS codes considered</th>
<th>Classification rationale</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Pizza topping made of mozzarella cheese (76 % by weight), sliced into small pieces; reground pepperoni (22 % by weight); spices</td>
<td>1601.10</td>
<td>1601.10</td>
<td>The pizza is primarily composed of cheese and has a significant amount of pepperoni and spices.</td>
</tr>
<tr>
<td>18</td>
<td>Wrist wearable device (‘smart watch’): a battery-operated device in the form of a band, incorporating a black and white e ink display, an electronic watch module, an accelerometer, an altimeter. A radio transceiver utilizes an open wireless technology standard (Bluetooth®), which enables the device to communicate wirelessly with certain mobile devices, such as mobile telephones for cellular networks. The device performs the following functions independently of any other device: view data and time; alarm; pedometer. When “paired” with a host device, additional features are available to the wearer, including: making/answering phone calls by speaking directly into the device; viewing incoming e-mails and notifications; operating the music player functions on the host device.</td>
<td>8517.62</td>
<td>8517.62</td>
<td>The device is a smart watch with various functionalities.</td>
</tr>
</tbody>
</table>

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HS Dispute Settlement

HS dispute settlement plays an important role in the facilitation of international trade. The Harmonized System (HS), as a multipurpose trade classification, has many different applications. It is used for administrative, statistical, and revenue purposes (including the coordination of domestic industries). This multipurpose function creates the potential for disputes between duty collection authorities and persons liable for duty payment.

Under the Harmonized System, commodities must be clearly distinguished from one another. A commodity or category of commodities, only one heading or subheading should be applied. Precluding classification in any other heading or subheading. Generally speaking, once the classification is made, the duty rate is automatically determined. This is beginning was classification.”

At the national level, classification is designed to carry out specific government policies and it is a classification takes place purely for the sake of classification. However, classification at international quite different and require international dispute settlement is different. Once the duty good is identified in the HS Nomenclature, it must be applied uniformly all over the world. In particular, its economic impact, may be different from country to country. The same product subject to low duties in one administration and high duties in another. For this reason, a technical nature of the Harmonized System, disputes in the HS Committee are settled at a classification point of view.
Harmonized System Explanatory Notes

The Explanatory Notes constitute the official interpretation of the Harmonized Tariff Schedule (HTS) at the international level.

Although not dispositive or legally binding on Customs or Courts, the EN's provide a commentary on the scope of each heading of the HTS and are generally indicative of the proper interpretation of the headings.
The Harmonized Tariff Schedules

- By law (19 U.S.C. 1202) goods are classified according to the Harmonized Tariff Schedules of the United States (HTSUS)

- The HTSUS is published annually by the International Trade Commission (ITC), with periodic updates

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HTS Archive

Pages

https://www.usitc.gov/tata/hts/archive/index.htm
2017 Modifications to the HTSUS
Snapshot of 2017 HTS Changes

- HS by the Numbers . . .
  - 33 different amendments
  - 30 different HS Chapters affected
  - 95 different headings affected
  - 339 subheadings affected
  - 266 subheadings added
  - 66 subheadings changed
  - 77 subheading deleted
  - 2937 different 10-digit HTSUS provisions impacted

- 25 Changes to Chapter 84
- 12 Changes to Chapter 85
- 4 (minor) changes to Chapter 90
# 2017 HTS Changes

## Modifications to the Harmonized Tariff Schedule

<table>
<thead>
<tr>
<th>Modifications Summary</th>
<th>Effective Dates</th>
<th>Proclamation Documents</th>
</tr>
</thead>
<tbody>
<tr>
<td>Presidential Proclamation 9549, December 1, 2016, to Modify the Harmonized Tariff Schedule of the United States under Section 1206 of the Omnibus Trade and Competitiveness Act of 1988 and for Other Purposes</td>
<td>December 1, 2016</td>
<td>Publication 4853</td>
</tr>
</tbody>
</table>
The Honorable Michael Froman
United States Trade Representative
600 Seventeenth Street
NW Washington, DC 20508

Dear Ambassador Froman:

Thank you for your letter of November 30, 2016, requesting that the Commission publish the text of the modifications to the Harmonized Tariff schedule of the United States that the President will proclaim in connection with the recommendations made by the World Customs Organization and codified in Commission Investigation 1205-11.

We will publish the text of these annexes as USITC Publication No. 4536 and will place the publication on the Commission’s internet site as soon as possible. The Commission will also make the document available to U.S. Government depository libraries, as you have requested.

If we may be of further assistance in this matter, please do not hesitate to contact us.

Sincerely,

[Signature]
Looking at the HTS:
by Chapter
Understanding and applying the General Rules of Interpretation (GRIs)

GENERAL RULES OF INTERPRETATION

Classification of goods in the tariff schedule shall be governed by the following principles:

1. The table of contents, alphabetical index, and titles of sections, chapters and sub-chapters are provided for ease of reference only; for legal purposes, classification shall be determined according to the terms of the headings and any relative section or chapter notes and, provided such headings or notes do not otherwise require, according to the following provisions:

2. (a) Any reference in a heading to an article shall be taken to include a reference to that article incomplete or unfinished, provided that, as entered, the incomplete or unfinished article has the essential character of the complete or finished article. It shall also include a reference to that article complete or finished (or falling to be classified as complete or finished by virtue of this rule), entered unassembled or disassembled.

(b) Any reference in a heading to a material or substance shall be taken to include a reference to mixtures or combinations of that material or substance with other materials or substances. Any reference to goods of a given material or substance shall be taken to include a reference to goods consisting wholly or partly of such material or substance. The classification of goods consisting of more than one material or substance shall be according to the principles of rule 3.
Understanding and applying the GRIs

3. When, by application of rule 2(b) or for any other reason, goods are, prima facie, classifiable under two or more headings, classification shall be effected as follows:

(a) The heading which provides the most specific description shall be preferred to headings providing a more general description. However, when two or more headings each refer to part only of the materials or substances contained in mixed or composite goods or to part only of the items in a set put up for retail sale, those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description of the goods.

(b) Mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale, which cannot be classified by reference to 3(a), shall be classified as if they consisted of the material or component which gives them their essential character, insofar as this criterion is applicable.

(c) When goods cannot be classified by reference to 3(a) or 3(b), they shall be classified under the heading which occurs last in numerical order among those which equally merit consideration.
Understanding and applying the GRIs

4. Goods which cannot be classified in accordance with the above rules shall be classified under the heading appropriate to the goods to which they are most akin.

5. In addition to the foregoing provisions, the following rules shall apply in respect of the goods referred to therein:

   (a) Camera cases, musical instrument cases, gun cases, drawing instrument cases, necklace cases and similar containers, specially shaped or fitted to contain a specific article or set of articles, suitable for long-term use and entered with the articles for which they are intended, shall be classified with such articles when of a kind normally sold therewith. This rule does not, however, apply to containers which give the whole its essential character;

   (b) Subject to the provisions of rule 5(a) above, packing materials and packing containers entered with the goods therein shall be classified with the goods if they are of a kind normally used for packing such goods. However, this provision is not binding when such packing materials or packing containers are clearly suitable for repetitive use.

6. For legal purposes, the classification of goods in the subheadings of a heading shall be determined according to the terms of those subheadings and any related subheading notes and, mutatis mutandis, to the above rules, on the understanding that only subheadings at the same level are comparable. For the purposes of this rule, the relative section, chapter and subchapter notes also apply, unless the context otherwise requires.
Principles of Tariff Classification: GRI 1

- **GRI 1:** Classification is determined according to:
  - the language or **terms of the relevant headings** and
  - any relative **section or chapter notes**

- Terms used in headings that not defined in the HTSUS (section or chapter notes) are defined according to the **common and commercial meaning** of the term
  - derived from dictionaries and dictionaries of scientific and technical terms, as well as other authoritative lexicons.
Principles of Tariff Classification

- The HTS covers all imported merchandise whether or not the merchandise is specifically provided for or not.

- Merchandise may be specifically provided for according to its:
  - Material or composition
  - Use, application, or function
  - Common (eo nonime), scientific, or technical name

- Types of Headings
  - Eo nomine headings (A heading that “names” a good)
  - Use headings (Principal and actual use headings)
  - Headings of general designation
  - Basket provisions (“other, other, other”)
Importance of Section and Chapter Notes

Section and Chapter Notes define what is included within a particular section or chapter and must always be read and considered.
Importance of Section and Chapter Notes

- Composite Machine Rule (Principal Function)
- Functional unit Rule

 Harmonized Tariff Schedule of the United States (2016) Supplement-1
Annotated for Statistical Reporting Purposes

xvi-2
Notes (con.)

(c) All other parts are to be classified in heading 8409, 8431, 8448, 8466, 8473, 8503, 8522, 8529 or 8538 as appropriate or, failing that, in heading 8487 or 8548.

3. Unless the context otherwise requires, composite machines consisting of two or more machines fitted together to form a whole and other machines designed for the purpose of performing two or more complementary or alternative functions are to be classified as if consisting only of that component or as being that machine which performs the principal function.

4. Where a machine (including a combination of machines) consists of individual components (whether separate or interconnected by piping, by transmission devices, by electric cables or by other devices) intended to contribute together to a clearly defined function covered by one of the headings in chapter 84 or chapter 85, then the whole falls to be classified in the heading appropriate to that function.
Principles of Tariff Classification: GRI 2(a)

➤ Treatment of unfinished, incomplete, or unassembled goods:

GRI 2(a)

-- Any reference in a heading to an article includes the **incomplete or unfinished article**, provided, as entered, the incomplete or unfinished article has the **essential character** of the complete or finished article.

-- The second part of Rule 2 (a) provides that a heading also includes articles complete or finished but which are imported in an **unassembled or disassembled form**.
Principles of Tariff Classification: GRI 2(a)

- Treatment of unfinished or incomplete articles
- The term "essential character" under the HTSUS has been defined to mean:
  - “... the attribute which strongly marks or serves to distinguish what an article is; that which is indispensable to the structure, core or condition of the article.” HQ 956538, dated November 29, 1994
  - A complete motor vehicle with body and interior intact, minus only the engine and transmission, leaves the form and shape and every visually apparent characteristic of a motor vehicle intact. HQ 967894, dated October 26, 2005
GRI 2(a): Unassembled or Disassembled Articles

Articles that are “unassembled or disassembled” means

- the components must assembled either by means of fixing devices (screws, nuts, bolts, etc.) or by riveting or welding, for example, **provided only** assembly operations are involved.
- No account is to be taken in that regard of the complexity of the assembly method.
- Components shall not be subjected to any further working operation for completion into the finished state.
CBP has consistently held that, in general, items imported in bulk for later assembly do not qualify under GRI 2(a) as an incomplete or unfinished good for classification purposes.

There must be evidence that the articles will definitely be assembled after importation, and that the articles are not being imported simply for inventory purposes.

There must be evidence that the articles are presented for reasons such as requirements or convenience of packing, handling or transport. See HQ 088891 (June 21, 1991), HQ 954420 (August 12, 1993), HQ 953860 (June 23, 1993).

For unassembled goods to be considered a set, all the articles for the assembly must be entered in the same importation; however, they need not be in the same container, box, crate, kit, etc. See HQ 958215 (July 9, 1996) and HQ 953313 (May 10, 1993).
"High Speed Lady Sanitary Napkin Machine" (sanitary napkin machine) which at the time of entry is unassembled.

The machine manufactures a sanitary napkin and consists of a number of stations, including winder, cutting, pulp processing, and paper adhesive application units.

Is the machine classified as “other machinery for making up paper, paper or paperboard under subheading 8441.80, HTSUS,” . . . or as “other machines and mechanical appliances having individual functions, not specified or included elsewhere in this chapter” under subheading 8479.89.95, HTSUS?

Applied GRI 2(a) and Note 3, Section XVI, HTSUS (composite machine rule)

CBP « principal function » of machine However, CBP was unable to determine the function which is considered the principal function of the machine.
GRI 2(b): Classification of Combinations of Materials or Substances

- Imports consisting of combinations of materials or substances:

  GRI 2(b)

  -- Reference in a heading to a material or substance will include mixtures or combinations of that material or substance with other materials or substances.

  -- Any reference to goods of a given material or substance shall be taken to include a reference to goods consisting wholly or partly of such material or substance.

  -- The classification of goods consisting of more than one material or substance shall be according to the principles of GRI 3.
GRI 3 provides for three methods of classifying goods that, *prima facie*, fall under two or more headings, either because of Rule 2(b) or for any other reason.

These methods operate in the order in which they are set out in the Rule.

The order of priority is
- (a) specific description;
- (b) essential character;
- (c) heading which occurs last in numerical order.
Principles of Tariff Classification: GRI 3(a)

- The heading which provides the most specific description shall be preferred to the heading that provides a more general description.

- Rule of “Relative Specificity”:
  - The most specific provision is the one with the requirements that are:
    - most difficult to satisfy and/or
    - describe the article with the greatest degree of accuracy and certainty.
  - Orlando Food Corp. v. United States, 140 F.3d 1437, 1440 (Fed. Cir. 1998).
  - In Sharp Microelectronics Technology, Inc v. United States, 122 F.3d 1446 (Fed. Cir. 1997), the court concluded that Heading 9013, HTSUS, is more specific than a heading providing for parts.
Classification of comfort flooring made up of interlocking foam tiles

Whether the interlocking plastic foam tiles that form mats are classified in

- heading 3918, HTSUS, as “[f]loor coverings … of plastics” or
- heading 3924, HTSUS, as “other household articles … of plastics.”

The foam mats are within the scope heading 3918, HTSUS, however, they also fall within the scope of heading 3924, HTSUS, because they are principally used in a household.

GRI 3(a) requires that we proceed to a relative specificity analysis to determine the heading under which the plastic mats should be classified.

heading 3918, HTSUS, prevails over heading 3924, HTSUS. “Floor coverings of plastics … in rolls or in the form of tiles” is a much more specific description that “other household articles … of plastics.”

the exemplars for heading 3924 (ash trays, hot water bottles, matchbox holders, dustbins, buckets, watering cans, food storage containers, curtains, drapes, table covers and fitted furniture dust-covers) represent a broad array of very different “household” articles.

Floor coverings may be included, but they are described more specifically by the eo nomine provision in heading 3918, HTSUS, which captures them by name, as well as their particular form and actual use.

The fact that the foam tiles form mats that are principally used in a household setting puts them into a very broad class or kind or articles in heading 3924, HTSUS, which obviously lacks the accuracy and certainty conferred by “floor coverings … of plastics, in rolls or in the form of tiles.”
Limitations on GRI 3(a)

- When the headings each refer to:
  - only part of the materials or substances contained in mixture
  - or a composite article
  - or to only part of the items in a set put up for retail sale

- the headings are regarded as equally specific, even if one of heading gives a more complete or precise description of the goods.

- Classification is resolved by applying GRI 3(b) or (c).
GRI 3(b): Composite Goods, Retail Sets & Essential Character

Goods that consist of:

- mixtures
- composite goods consisting of different materials or made up of different components, and
- goods put up in sets for retail sale
- are classified as if they consist of the material or component which gives them their essential character.
Principles of Tariff Classification

What is “Essential character”?

- Essential character varies for different kinds of goods.
- It may be determined by the nature of the material or component, its bulk, quantity, weight or value, or by the role of each material in relation to the use of the goods.
- Recent court decisions on the essential character for GRI 3(b) purposes have looked primarily to the role of the constituent material in relation to the use of the goods.
What is a Composite Article?

For purposes of Rule 3(b) composite goods are made up of different components that are:

- Attached to each other to form a practically inseparable whole or

- Consist of separate components, provided:
  - the components are adapted for use with one another,
  - are mutually complementary and,
  - together they form a whole which would not normally be offered for sale in separate parts.
What is “Essential character”?  

The Tabletop Water Fountain Case

- No specific tariff provision for fountains
- Comprised of: (1) a plastic water reservoir or base; (2) an electric submersible pump; (3) plastic tubing; (4) various objects, such as simulated rocks, natural polished stones, through which and/or over which water flows
- The parties disagreed as to which component imparts the essential character of the Serenity Ponds.
- Court found the Serenity Ponds' essential character was imparted by the pump, as the pump causes the water to flow over the simulated landscape, which achieves the intended purpose of stimulating the visual and auditory senses.
- Conair Corp. v. United States Slip Op 2005-95, aug 12, 2005
Tariff Classification:
The Retail Set Rule

For the purposes of this Rule, the term “goods put up in sets for retail sale” means goods that:

1. Consist of at least two different articles that are, prima facie, classifiable in different headings;

2. Consist of products or articles put up together to meet a particular need or carry out a specific activity; and

3. Are put up in a manner suitable for sale directly to users without repacking (e.g., in boxes or cases or on boards).
Goods Put up for Retail Sale: #1

"Portable Mosquito Net Survivor Kit". Consists of:

- mosquito net, top and pants contained in a drawstring woven textile bag.
- The articles are used to protect a person from bothersome insects

Above-described merchandise will not necessarily be used in conjunction with each other to carry out a specific activity and can be used independently of each other.

For classification purposes the "Portable Mosquito Net Survivor Kit" must be broken out for each item and classified separately.
Principles of Tariff Classification: GRI 3(c)

**GRI 3(c)**

If an article cannot be classified by application of GRI 3(a) or GRI 3(b), it will be classified under the heading which occurs last in numerical order among those that merit equal consideration.
GRI 5: Cases & Containers

- Cases and containers are classified with the articles when:
  - specially shaped or fitted to contain a specific article or set of articles,
  - suitable for long-term use and entered with the articles for which they are intended,
  - when of a kind normally sold therewith.

- Packing materials and packing containers entered with the goods therein shall be classified with the goods if they are of a kind normally used for packing such goods.

- This provision is not binding when such packing materials or packing containers are clearly suitable for repetitive use.
GRI 6: Classification Under Subheadings

- The classification of goods within the subheadings of a heading will be determined according to the terms of those subheadings and any related subheading notes.

- Only subheadings at the same level are comparable.

- For the purposes of this rule, the relative section, chapter and subchapter notes also apply, unless the context otherwise requires.

- Must first resolve the classification of the article at the heading level.
Classification of “Kits” & Other Shipments Involving Multiple Articles

- Basic rule: all articles must be classified separately under individual headings for each good

- Exceptions:
  - “goods put up in sets for retail sale”
    1. Consist of at least two different articles that are classifiable in different headings;
    2. Consist of articles put up together to meet a particular need or carry out a specific activity; and
    3. Are put up in a manner suitable for sale directly to users without repacking (e.g., in boxes or cases or on boards).
  - Goods meeting the composite article rule of GRI 3(b)
    o the components are adapted for use with one another, are mutually complementary and,
    o not normally be offered for sale in separate parts.
  - Unassembled articles that have the essential character of the assembled article
Interpreting Tariff Terms

Common Meaning:

In this instance, there is no clear definition of "vitamin" within Chapter 29 or its legislative history. ...

We have held that, when, as here, a tariff term is not defined in either the HTSUS or its legislative history, the term's correct meaning is its common or dictionary meaning in the absence of evidence to the contrary. . . .

We have explained that, to determine the common meaning of a tariff term, a court may rely upon its own understanding of terms used, and may consult standard lexicographic and scientific authorities.

Sigma-Tau HealthScience, Inc. v. United States, 838 F.3d 1272, 1278-1279 * (Fed. Cir. 2016)
Interpreting Tariff Terms

➢ Types of Headings

  ▪ Eo nomine headings (A heading that “names” a good)
    o An *eo nomine* provision describes a "commodity by a specific name, usually one well known to commerce."

  ▪ Use headings (Principal and actual use headings)

  ▪ Headings of general designation

➢ Use provisions are generally considered more specific than *eo nomine* provisions ... and the most specific heading controls under GRI 3(a). *Orlando Food Corp., 140 F.3d at 1441*
Interpreting Tariff Terms: Eo Nomine

- an eo nomine designation will ordinarily include all forms of the named article. *Len-Ron, 118 F. Supp. 2d at 1281*

- HTSUS terms are to be construed according to their common and commercial meanings, which are presumed to be the same." *Carl Zeiss, Inc. v. United States, 195 F.3d 1375, 1379 (Fed. Cir.)*

- Common and commercial meaning are determined by consulting dictionaries, lexicons, scientific authorities and other reliable sources.

- “Use cannot be ignored in determining whether an article falls within an eo nomine tariff provision. “ *CamelBak Prods., LLC v. United States, 649 F.3d 1361 (Fed. Cir. 2011)*
Interpreting Tariff Terms

- Absent specific language or a contrary legislative intent an *eo nomine* provision covers all forms of the article. *Hasbro Indus., Inc. v. United States*, 7 Fed. Cir. (T) 110, 112, 879 F.2d 838, 840 (1989).

- *Eo nomine* provisions include merchandise not known to commerce at the time of enactment provided the article possesses an *essential resemblance* to the one named in the tariff.
Principal vs. Actual Use Provisions

Actual Use Provisions

- “Actual use” provisions are those where use must be proven with a certification process.

- Subheading 9817.00.5000, HTSUS, provides for Machinery, equipment and implements to be used for agricultural or horticultural purposes.

- The language "to be used" renders this an "actual use" provision, where actual use of the imported goods must be proven to receive the duty benefit.

- Generally limited to provisions related to goods for agricultural or horticultural use.
Use Provisions

A "use" provision is "a provision describing articles by the manner in which they are used as opposed to by name,"

while an eo nomine provision is one "in which an item is identified by name."

There are two types of "use" provisions –

- "actual use" and "principal (formerly known as "chief") use.
- "An "actual use" provision is satisfied only if "such use is intended at the time of importation, the goods are so used and proof thereof is furnished within 3 years after the date the, goods are entered."
- In contrast, a "principal use" provision functions essentially "as a controlling legal label, in the sense, that even if a particular import is proven to be actually used inconsistently with its principal use, the import is nevertheless classified according to its principal use."
Principal Use

- A tariff classification controlled by use (other than actual use) is determined according to the use in the United States . . . of the class or kind to which the imported goods belong . . .

- not the use of the specific import 
Classifications Based On Use

- Many tariff descriptions describe products based on their “use”

Examples:

- Heading 3923 -- Articles for the conveyance or packing of goods, of plastics;

- Heading 8486 -- Machines and apparatus of a kind used solely or principally for the manufacture of semiconductor wafers, semiconductor devices, electronic integrated circuits or flat panel displays;

- Heading 8544 -- Other electric conductors, for a voltage not exceeding 1,000 V: Other; Of a kind used for telecommunications
Classifications Based On Use

- In most cases, principal use is implied from the language of the HTSUS. A designation by use may be established although the word ‘use' or ‘used' does not appear in the language of the statute.

- *Stewart-Warner Corp. v. United States, 748 F.2d 663, 667 (Fed. Cir. 1984)* stating:

  "Dog food is a tariff item which, like household utensils, tableware, and other classifications too numerous to detail, is a use classification. It means food that is used to feed dogs."

- Principal use has been defined as a use "which exceeds any other single use". *Lenox Collections v. United States, 20 CIT 194*
Classifications Based On Use

Additional U.S. Rule 1:
In the absence of special language or context --

- A tariff classification controlled by use (other than actual use) is determined in accordance with the use in the United States of goods of that
  - class or kind to which the imported goods belongs, and
  - the controlling use is the principal use;
Classification Based On Use

The principal use of the class or kind of goods to which the import belongs, and not the principal use of the specific import, which is controlling.

Three Step Process:

- Define the attributes of each class or kind of goods which are involved (tariff headings)
- Determine the attributes of the subject merchandise and which class it falls within.
- Compare the two. Classify the article under the heading for the goods which it shares the most attributes.
Determining Class or Kind:
The Carborundum Factors

Factors for determining “class or kind”
- What are the general physical characteristics of the articles?
- What are the expectation of the ultimate purchaser?
- How are the article distributed (Channels of trade)?
- What is the environment of sale (accompanying accessories, manner of advertisement and display)?

Compare attributes of imported article to that of each class
- Use in the same manner as merchandise which defines the class
- Economic practicality of so using the import, and recognition in the trade of this use.
  (United States v. Carborundum Company, 63 CCPA 98)
Summary Of GRIs

- Determine all headings that might describe all or a part of the article you wish to classify
  - Review relevant Section and Chapter Notes for each provision
  - Determine whether there is language that includes or excludes the application of a specific heading
  - If language of heading or Section and chapter notes do not resolve the issue, apply GRI’s 2 and 3.
    - Select the Heading that is most specific
    - If headings are equally specific, article is classified according to material or component which gives the article its “essential character”
    - If the “essential character” of the article cannot be determined, then the article shall be classified under the heading which occurs last in numerical order among those which equally merit consideration
Classification of Parts & Accessories

- classifications for parts & accessories are “use” provisions, but remember --

- AUSRI 1(c) –

  - A provision for parts of an article covers products solely or principally used as a part of such articles but a provision for "parts" or "parts and accessories" shall not prevail over a specific provision for such part or accessory;
Classification of Parts & Accessories

What is a “Part”?

- The mere fact that two articles are designed and constructed to be used together does not make either a part of the other. Willoughby Camera Stores, Inc. v. United States, 21 CCPA 322, T.D. 46851 (1933)

Two different tests:

- “A part is an item that is "an integral, constituent, or component part, without which the article to which it is to be joined, could not function as such article." Willoughby Camera
- “An imported item dedicated solely for use with another article is a 'part' of that article within the meaning of the HTSUS." United States v. Pompeo, 43 C.C.P.A. 9 (1955)
The Federal Circuit in *Bauerhin Tech. Ltd. v. United States*, 110 F.3d 774, (1997) instructed that although these cases provided different standards, they were not inconsistent and "must be read together."

The term "parts" does not include objects that are distinct and separate commercial entities. *Bauerhin, 110 F.3d at 779; Willoughby Camera, 21 C.C.P.A. at 325*

Empty cassette housings are properly classified as "parts and accessories of" videocassette recorders (VCRs). *Technicolor Videocassette v. United States, 90 F.3d 484*

Computer manufacturers' coolant distribution unit (CDU) was properly classified as equipment "for the treatment of materials by a process involving a change of temperature“ and not a part or accessory of an ADP Machine. *Fujitsu Am., Inc. v. United States, 342 F. Supp. 2d 1326*
Classification of Parts & Accessories

- An "accessory" must bear a direct relationship to the primary article that it accessorizes. Rollerblade, Inc. v. United States, 282 F.3d 1349
  - An accessory is commonly defined as "a thing of secondary or subordinate importance. . . An object or device that is not essential in itself but adds to the beauty, convenience or effectiveness of something else." Webster's Third New International Dictionary 11 (1981).
  - Another source defines accessory as "equipment, usually demountable and replaceable," that is added "for convenience, comfort, safety or completeness." Webster's New Universal Unabridged Dictionary 11 (2d ed. 1983).
Rule 2(a) if a “part” of an article of chapters 84 and 85 have a specific provision, the article is classified under that provision and not as a part or accessory.

2. Subject to note 1 to this section, note 1 to chapter 84 and to note 1 to chapter 85, parts of machines (not being parts of the articles of heading 8484, 8544, 8545, 8546 or 8547) are to be classified according to the following rules:

   (a) Parts which are goods included in any of the headings of chapters 84 and 85 (other than headings 8409, 8431, 8448, 8466, 8473, 8485, 8503, 8522, 8529, 8538 and 8548) are in all cases to be classified in their respective headings;

   (b) Other parts, if suitable for use solely or principally with a particular kind of machine, or with a number of machines of the same heading (including a machine of heading 8479 or 8543) are to be classified with the machines of that kind or in heading 8409, 8431, 8448, 8466, 8473, 8503, 8522, 8529 or 8538 as appropriate. However, parts which are equally suitable for use principally with the goods of headings 8517 and 8525 to 8528 are to be classified in heading 8517;

   (c) All other parts are to be classified in heading 8409, 8431, 8448, 8466, 8473, 8503, 8522, 8529 or 8538 as appropriate or, failing that, in heading 8485 or 8548.
Section XVI, Note 2: Treatment of Parts

- In general, parts which are suitable for use solely or principally with a particular machine are classified in the same heading as the machine or apparatus with which they are used.

- The above rule does not apply to parts which in themselves constitute an article covered by a heading of Section XVI.

- These are to be classified in their own appropriate heading even if specially designed to work as part of a specific machine. This applies in particular to:
  - Pumps and compressors (headings 84.13 and 84.14).
  - Lifting and handling machinery (heading 84.25, 84.26 or 84.28).
  - Taps, cocks, valves, etc. (heading 84.81).
Section XVI, Note 2: Treatment of Parts

- Ball or roller bearings heading 8482
- Transmission shafts, cranks, bearing housings, plain shaft bearings, gears and gearing (including friction gears and gear-boxes and other speed changers), flywheels, clutches and shaft couplings of heading 8483
- Gaskets and similar joints of heading 8484
- Electric motors of heading 8501
- Electrical transformers and other machines and apparatus of heading 8504.
- Magnets of heading 8505
Ruling Requests

Types of Rulings

- See 19 CFR 177:
  - 30 day National Commodity Specialist Division
  - Headquarters Rulings (longer)
  - HQ appeals from NCSD Decisions
  - Requests for internal Advice (Current transactions)
  - Protest and AFR (Application for Further Review)

Do you need a ruling?

- Reasonable care
- Broker or Legal memorandum on classification

Requirements for Electronic Ruling Requests

The procedures under this rulings program apply to requests for binding classification rulings under the Harmonized Tariff Schedule (HTS) and certain marking, origin, NAFTA and applicability of Trade Program rulings.

Under the newly enhanced eRulings program, the importing community may submit an electronic request for a binding ruling by accessing the new eRulings Template. The template permits the online filing of an electronic binding ruling request directly to the National Commodity Specialist Division (NCSD) of Regulations and Rulings.

The eRulings Template is reserved exclusively for the electronic submission of initial binding ruling requests to the NCSD in New York. Any questions or follow-up inquiries concerning electronic binding ruling requests must be made via telephone to Customs and Border Protection, Customs Information Exchange at (646) 733-3068, 3062 or 3071.

Upon transmission of an electronic eRuling request, the requester will receive an email acknowledging their use of the template. If the transmission is received by the NCSD in good order, the requester will receive an email acknowledgement of receipt, complete with a binding ruling control number, within one business day. The official binding ruling response, complete with an electronic signature, will also be returned by email. Ruling requests that require a sample will be excluded from the program.

Generally, the NCSD will issue all such rulings within 30 calendar days of the date of receipt. Some delay may occur if a laboratory report or consultation with another agency is required. Rulings that require referral to Headquarters, B&F, will be issued by mail within 90 days of receipt.

The ruling request must concern prospective shipments. A copy of the ruling or the ruling control number should be provided with the entry documents filed at the time the merchandise is imported. Please note that if for any reason you cannot meet the requirements for filing an electronic ruling request, you can still file for a binding ruling by mail. See What are Ruling Letters? for additional information.

Attachments must be in one of the following formats: Microsoft Word (.DOC), JPEG format for pictures (.JPG), Plain text (.TXT), Adobe Acrobat (.PDF), Power Point (.ppt), and GIF image format (.gif). No zip or compressed files will be permitted. Failure to adhere to these requirements may result in rejection of the request.
Ruling Requests

- Ruling requests concern prospective shipments
- What information should be included?
  - A request for a ruling should include a full and complete description of the article and whenever germane to the proper classification of the article,
    - information as to the article's principal use in the United States,
    - common, its commercial, or technical designation (i.e., name), and,
    - where the article is composed of two or more materials, the relative quantity (by weight and by volume) and value of each.
Ruling Requests

➢ Present arguments or information that supports your proposed classification, including definitions or principal use information

➢ Include relevant sources of information, such as:
  - WCO Explanatory Notes
  - CBP administrative/binding rulings (CBP’s CROSS Rulings Database http://rulings.cbp.gov)
  - CBP “Informed Compliance Publications”
  - Court Decisions (CBP Bulletin and Decisions)
HTS & Schedule B Classifications
Foreign Trade

Important Links
- Global Reach Blog
- Newsletters
- ACE AEDirect
- DropBox
- Guide to Foreign Trade
- Foreign Trade Products
- Download Subscription
- USA Trade Online

Related Sites
- Business and Industry
- Briefing Room
- North American Industry Classification System (NAICS)

Economic Indicator Database
- October 2016 Trade in Goods and Services
  - Trade: $421.0 Billion
  - Exports: $309.4 Billion
  - Imports: $229.6 Billion
  - Next release: January 8, 2017
  - Complete Release Schedule

Schedule B
The export statistics are initially collected and compiled in terms of approximately 9,000 commodity classifications in Schedule B. Statistical Classification of Domestic

Sections

Schedule B Search
Use our enhanced search at http://us.census.gov/foreign-trade/schedule-b.html. For more information, read our announcement.

Browse
Browse through the chapters of the Schedule B book.
- 2016: Latest through HTML or PDF versions of Schedule B book content.
- 2015: Latest through HTML or PDF versions of Schedule B book content.
- 2014: Latest through HTML or PDF versions of Schedule B book content.
- 2013: Latest through HTML or PDF versions of Schedule B book content.
- 2012: Latest through HTML or PDF versions of Schedule B book content.

Note: Please check back periodically for the most recent files.

Download
Download a text file containing the ENTIRE Schedule B book.

NOTE: If you select ASCII file (the one that’s not compressed), the file will load in your browser like any web document. Select SAVE from your browser’s FILE menu.

Concordance files for AES Users

Year 2016:
Export Classification System (Harmonized System)

Schedule B Search Engine

Describe Your Product

Click here, to watch an Export Training Video on how to Classify Your Commodity.

USA Trade Online (https://usatrade.census.gov), the official source of U.S. merchandise trade data, offers current and historical U.S. import and export statistics. Use USA Trade Online to:

- Appraise trading trends and market environment
- Improve market research and development
- Measure the impact of foreign competition
- Use trade data as a statistical resource for determining trade policies

Need Help? Contact us at:
Email: ScheduleB@census.gov
Phone: 1-800-549-0595 option #2
Web Sites:
- http://www.census.gov/trade (Foreign Trade Website)
- http://www.export.gov (International Trade Administration, set help finding international customers)
- http://usatrade.census.gov (The Official Source for U.S. Merchandise Trade Data)

Looking for tariff information? Visit http://www.3ole.com

Want more trade data?USA Trade® Online click here
Export Classification System (Harmonized System)

- Import codes are used for a variety of tracking and tariff purposes so more detailed break-outs are done for import codes than exports.
- More import codes exist than export codes.
- There are about 8,000 different export HS codes while there are about 18,000 different import HS codes.
- Except as noted, the statistical reporting numbers in the HTS for articles falling in Chapters 1 through 97 may be used in place of those in Schedule B.
GENERAL RULES OF INTERPRETATION

Classification of goods in Schedule B shall be governed by the following principles:

1. The titles of sections and chapters are provided for ease of reference only. Classification shall be determined according to the terms of the headings and relative section or chapter notes and, unless such headings or notes have additional requirements, according to the following provisions.

2. Any reference in a heading to an article shall be taken to include a reference to that article incomplete or unfinished, provided that, as presented, the incomplete or unfinished article has the essential character of the complete or finished article. It shall also be taken to include a reference to the article complete or finished (or failing to be classified as complete or finished by their nature).

However, when two or more headings each refer to parts only of the materials or substances contained in mixed or composite goods or to parts only of the items in a set put up for retail sale, those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description of the goods.

b. Mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale, which cannot be classified by reference to 3a, shall be classified as if they consisted of the material or component that gives them their essential character, insofar as this criterion is applicable.

c. When goods cannot be classified by reference to 3a or 3b, they shall be classified under the respective headings of the materials or substances that are predominant in the good as to kind or quantity.
Harmonized Tariff Schedule of the United States (2007) (Rev. 2)
Annotated for Statistical Reporting Purposes

NOTICE TO EXPORTERS

Through this notice, this publication may be used in place of the reporting codes of Schedule B for reporting exports on the Shipper’s Export Declaration or under the program for electronic reporting of exports.

Except as noted below, the statistical reporting numbers (with the article descriptions and units of quantity) for articles falling in Chapters 1 through 97 may be used in place of those in Schedule B. The special prefix symbols which denote special tariff treatment should not be included.

Exceptions:
The following provisions are applicable for export purposes in lieu of the corresponding provisions in the HTS:

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<thead>
<tr>
<th>Description</th>
<th>Schedule B Number</th>
<th>Unit of Quantity</th>
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</thead>
<tbody>
<tr>
<td>Hearts of bovine animals, frozen</td>
<td>0206.29.0010</td>
<td>kg</td>
</tr>
<tr>
<td>Kidneys of bovine animals, frozen</td>
<td>0206.29.0020</td>
<td>kg</td>
</tr>
<tr>
<td>Brains of bovine animals, frozen</td>
<td>0206.29.0030</td>
<td>kg</td>
</tr>
<tr>
<td>Sweetbreads of bovine animals, frozen</td>
<td>0206.29.0040</td>
<td>kg</td>
</tr>
<tr>
<td>Lips of bovine animals, frozen</td>
<td>0206.29.0050</td>
<td>kg</td>
</tr>
<tr>
<td>Other edible offal of bovine animals, n.e.s.o.i. (except tongues and livers), frozen</td>
<td>0206.29.0090</td>
<td>kg</td>
</tr>
<tr>
<td>Tongues of swine, frozen</td>
<td>0206.49.0010</td>
<td>kg</td>
</tr>
<tr>
<td>Hearts of swine, frozen</td>
<td>0206.49.0020</td>
<td>kg</td>
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# NOTICE TO EXPORTERS

<table>
<thead>
<tr>
<th>Description</th>
<th>Schedule B Number</th>
<th>Unit of Quantity</th>
</tr>
</thead>
<tbody>
<tr>
<td>Transmission apparatus, except television and transmitters, not for use in civil aircraft</td>
<td>8525.10.8040</td>
<td>X</td>
</tr>
<tr>
<td>Transceivers except citizens band (CB) and transceivers operating on frequencies from 49.82 to 49.90 MHz (including walkie talkies), for use in civil aircraft</td>
<td>8525.20.3005</td>
<td>No.</td>
</tr>
<tr>
<td>Hand-held transceivers, not for use in civil aircraft</td>
<td>8525.20.3030</td>
<td>No.</td>
</tr>
<tr>
<td>Radio transceivers for frequencies not exceeding 30 MHz, not for use in civil aircraft</td>
<td>8525.20.3042</td>
<td>No.</td>
</tr>
<tr>
<td>Transmitters, for use in civil aircraft</td>
<td>8525.50.6010</td>
<td>No.</td>
</tr>
<tr>
<td>Transmitters capable of transmitting on frequencies not exceeding 30 MHz, not for use in civil aircraft</td>
<td>8525.50.6030</td>
<td>No.</td>
</tr>
<tr>
<td>Transmission apparatus, except television and transmitters, for use in civil aircraft</td>
<td>8525.50.8020</td>
<td>X</td>
</tr>
<tr>
<td>Transmission apparatus, except television and transmitters, not for use in civil aircraft</td>
<td>8525.50.8040</td>
<td>X</td>
</tr>
<tr>
<td>Transceivers except citizens band (CB) and transceivers operating on frequencies from 49.82 to 49.90 MHz (including walkie talkies), for use in civil aircraft</td>
<td>8525.60.1025</td>
<td>No.</td>
</tr>
<tr>
<td>Hand-held transceivers, not for use in civil aircraft</td>
<td>8525.60.1035</td>
<td>No.</td>
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<tr>
<td>Radio transceivers, not for use in civil aircraft</td>
<td>8525.60.1055</td>
<td>No.</td>
</tr>
<tr>
<td>Radar apparatus, for use in civil aircraft</td>
<td>8526.10.0010</td>
<td>No.</td>
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<tr>
<td>Radar apparatus, not for use in civil aircraft (not including apparatus designed for boat or ship installation)</td>
<td>8526.10.0070</td>
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